STATE OF MICHIGAN

COURT OF APPEALS

IBEAWUCHI MBANU,

Plaintiff-Appellant,

v

ATHENEUM HOTEL CORPORATION,

Defendant-Appellee.

UNPUBLISHED
March 7, 2006

No. 255829
Wayne Circuit Court
LC No. 02-200813-NZ

Before: Cooper, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order awarding case evaluation sanctions to defendant Atheneum Hotel Corporation[1] pursuant to MCR 2.403 in the amount of $20,902.67. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought a personal injury action against defendant and ten additional people and businesses, including several security companies and security guards. Plaintiff alleged that he was a business invitee on defendant's premises when he was assaulted and battered by three security guards. Plaintiff further alleged that defendant had a master-servant relationship with the security companies and was therefore subject to respondeat superior liability for the guards' actions.

A case evaluation hearing was held on July 15, 2003. Because several of the defendants below had never appeared in or defended against plaintiff's action, the only parties evaluated were plaintiff, Atheneum, and two other defendants. The Case Evaluation Notification document specifically listed all additional named defendants as "parties not evaluated." Plaintiff was unanimously awarded $7,500 against each of the participating defendants. Plaintiff rejected each award; the participating defendants all accepted the awards.

On November 26, 2003, plaintiff moved for default judgment against two of the nonappearing security companies and two of the nonappearing guards. On January 21, 2004,

[1] The term "defendant" as used in this opinion refers only to Atheneum Hotel Corporation unless otherwise stated. The additional defendants below are not parties to this appeal.

default judgments were entered against these four parties, each in the amount of $125,000, for a total of $500,000. The case proceeded to trial as against defendant Atheneum only.[2] The jury rendered a verdict in favor of defendant, and a judgment of no cause of action was entered in defendant's favor. The trial court subsequently granted defendant's motion for case evaluation sanctions pursuant to MCR 2.403 based on plaintiff's rejection of the $7,500 case evaluation award.

Plaintiff, noting that MCR 2.403(O)(4) provides that costs cannot be imposed on a plaintiff who obtains an "aggregate verdict" more favorable to the plaintiff than the "aggregate evaluation," argues that the trial court erred in awarding case evaluation sanctions. Plaintiff contends that the default judgments entered against the nonappearing defendants constitute "verdicts" within the meaning of MCR 2.403(O)(2)(c) and that, therefore, the "aggregate verdict" is $500,000—more than the "aggregate evaluation" of $22,500.

This Court reviews de novo a trial court's decision to deny or impose case evaluation sanctions. *Rohl v Leone*, 258 Mich App 72, 75; 669 NW2d 579 (2003); *Dessart v Burak*, 252 Mich App 490, 494; 652 NW2d 669 (2002). This case also concerns the interpretation of a court rule, which, like matters of statutory interpretation, is a question of law that is reviewed de novo. *Marketos v American Employers Ins Co*, 465 Mich 407, 412; 633 NW2d 371 (2001). When the language of a court rule is unambiguous, the plain meaning expressed must be enforced, without further judicial construction or interpretation. *Id*. at 413; *Grievance Administrator v Underwood*, 462 Mich 188, 193-194; 612 NW2d 116 (2000).

"Generally, a party who rejects a case evaluation award is subject to sanctions if the party does not improve its position at trial." *Rohl*, *supra* at 75; see also *Elia v Hazen*, 242 Mich App 374, 378; 619 NW2d 1 (2000). MCR 2.403(O) provides, in relevant part:

> (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation.
>
> * * *
>
> (2) For the purpose of this rule "verdict" includes,
>
> (a) a jury verdict,
>
> (b) a judgment by the court after a nonjury trial,
>
> (c) *a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.*
>
> * * *
>
> (4) In cases involving multiple parties, the following rules apply:

[2] Summary disposition was granted in favor of the two other defendants that had participated in case evaluation.

> (a) . . . [I]n determining whether the verdict is more favorable to a party than the case evaluation, the court shall consider only the amount of the evaluation and verdict as to the particular pair of parties, rather than the aggregate evaluation or verdict as to all parties. *However, costs may not be imposed on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation*. [Emphasis supplied.]

The first sentence of MCR 2.403(O)(4)(a), as defendant correctly maintains, requires this Court to look only at the case evaluation amount and the verdict as it pertains to the "particular pair of parties," i.e., plaintiff and defendant. Accordingly, it is true that the verdict of no cause of action in favor of defendant is "more favorable" to defendant than the case evaluation of $7,500 against defendant.

However, plaintiff is correct in his assertion that the plain language of the definition of "verdict" in MCR 2.403(O)(2)(c) presumably applies to the default judgments that were entered against the security companies and guards, since these judgments were quite literally "entered as a result of a ruling on a motion after rejection of the case evaluation."

The pivotal question, then, is whether the "aggregate verdict" in this case is more favorable to plaintiff than the "aggregate evaluation" within the meaning of MCR 2.403(O)(4)(a). This Court was faced with a similar question in *Calka v Roger-Bud, Inc*, unpublished opinion per curiam of the Court of Appeals, Docket No. 242075 (January 20, 2004).[3] In *Calka*, the plaintiff brought a personal injury action against an intoxicated driver, Paul Robak, and a nightclub, "Rascal's Lounge," alleging that Rascal's was liable under the dramshop provisions of MCL 436.1801. The plaintiff obtained a default judgment against Robak in the amount of $50,000. Subsequently, the claim against Rascal's was submitted for case evaluation. Robak, due to the prior entry of the default judgment, was not included in the case evaluation, which resulted in an award of $37,500 against Rascal's. Both the plaintiff and Rascal's rejected the evaluation. Following a jury trial, a judgment of no cause of action was entered in favor of Rascal's, which then successfully sought case evaluation sanctions under MCR 2.403(O)(1).

This Court rejected the plaintiff's argument that the aggregate verdict was $50,000, and that that amount was more favorable to the plaintiff than the amount of the case evaluation. Holding that the default judgment did not qualify as a "verdict" under MCR 2.403(O)(2)(b) or (c) because it was not rendered after a jury trial or after rejection of the case evaluation, the Court additionally noted that

> it would appear logically inappropriate to include the default judgment award against Robak as part of an "aggregate" verdict. The default judgment was entered against Robak months prior to the case evaluation. Robak was not included in the case evaluation process. Hence, the award of $37,500 that was rejected by the parties only determined the liability between plaintiff and defendant Rascal's Lounge. [*Id*., slip op at 7.]

[3] Because *Calka* is an unpublished opinion, it is not precedentially binding, MCR 7.215(C)(1), but we view it as persuasive.

We find the *Calka* panel's analysis to be persuasive and hold that the "aggregate evaluation" contemplated by MCR 2.403(O)(4)(a) does not apply to parties that did not participate in the case evaluation. A court may consult a dictionary to determine the ordinary meaning of undefined words in a statute or court rule. *In re FG*, 264 Mich App 413, 418; 691 NW2d 465 (2004); *Lewis v LeGrow*, 258 Mich App 175, 183; 670 NW2d 675 (2003). "Aggregate" is defined in Black's Law Dictionary (6th ed.) as "[e]ntire number, sum, mass, or quantity of something; total amount; complete whole." Accordingly, the term "aggregate verdict" as used in subrule (O)(4)(a) means the verdict as to all parties, and the term "aggregate evaluation" refers to the evaluation as to all parties. In this case, there is simply no "aggregate evaluation," because the evaluation on its face applies only to three of the eleven defendants that were, at the time of the evaluation, still active parties in the lawsuit. Because there is no "aggregate evaluation," it cannot be said that plaintiff obtained an "aggregate verdict more favorable . . . than the aggregate evaluation,"[4] and the trial court properly awarded sanctions in favor of defendant.

Affirmed.

/s/ Jessica R. Cooper
/s/ Kathleen Jansen
/s/ Jane E. Markey

[4] This analysis, while grounded in the plain language of the court rule, is also fully consistent with the purpose of case evaluation sanctions, which is "to encourage settlement, deter protracted litigation, and expedite and simplify the final settlement of cases" by placing the burden of litigation costs on the party who demands a trial by rejecting the case evaluation award. *Rohl, supra* at 75, quoting *Dessart*, *supra* at 498.